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Guidelines for Avoiding Pitfalls When Drafting Juvenile Curfew Laws: A Legal Analysis

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GUIDELINES FOR AVOIDING PITFALLS WHEN DRAFTING JUVENILE CURFEW LAWS: A LEGAL ANALYSIS

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ABSTRACT

Curfew laws seek to provide general protection to youth and adults by restricting the times that children of certain ages are allowed to occupy public places or streets. These laws often contain exemptions for youth accompanied by an adult, responding to an emergency, or traveling to or from school, work, or a religious service, among others. However, the actual language used and exemptions included vary by locality. As a result, courts have reached different results—several courts upheld curfew laws as constitutional, while others overturned these laws. Although not the original reason behind juvenile curfew enactment, several studies have found that juvenile curfew laws reduce other youth health consequences. For example, studies have shown that the enactment of a juvenile curfew law reduces juvenile traffic injuries and fatalities, pediatric transports and pediatric trauma transports, and the volume of juvenile trauma cases. Given that these laws have public health benefits and continue to be enacted across the country, this article will provide guidance for policymakers on how to propose and draft these laws to avoid problems in other similar statutes that resulted in them being overturned. A four-step framework by Harold Lasswell for understanding the creation of a policy called "The Policy Cycle" is used as structure for this article.

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I. INTRODUCTION

On July 12, 2011, two weeks after a fight ended in a stabbing, the people in Montgomery County, Maryland found themselves on opposing sides of a divisive issue: should the county enact a juvenile curfew law? Some of the county citizens argued against it: "Teen curfews . . . just punish all young people for the misdeeds of a few. What's next, mandatory summer school for everyone because a few kids flunked English? . . . There are more substantial ways to combat crime and boredom, so long as we're willing to find them."[1] Others argued for it: "There's an increase in gang violence . . . [of course] no one likes to have their freedom restricted . . . [but the curfew] helps the kids who are good kids . . . to get them out of harm's way late at night."[2]

The bill, proposed by Montgomery County Executive Ike Leggett, would have restricted people under the age of eighteen from being out in public during certain hours.[3] Legget and the Montgomery County Office of Public Information argued that a youth curfew would be "an additional method to improve the safety of juveniles, the safety of residents and visitors to our increasingly urbanized communities, and to reduce juvenile-related crimes."[4] Several county advisory boards and other county groups as well as the Maryland Comptroller Peter Franchot and the Police Chief Tom Manger came out in support of the proposed law.[5] On the other side were Councilmember and Chairman of the Montgomery County Council's Public Safety Committee Phil Andrews, Councilmember Marc Elrich, other county groups, and a citizens' group called "Stand Up to the Montgomery County Curfew."[6] The bill was never voted on by the council and on December 6, 2011, lawmakers

1. *Teens Need Things To Do, Not a Curfew*, JUST UP THE PIKE (July 13, 2011), http://www.justupthepike.com/2011/07/teens-need-things-to-do-not-curfew.html.

2. Dan Reed, *Some Seek Alternatives to Proposed Montgomery Curfew*, GREATER GREATER WASHINGTON (Aug. 25, 2011), http://greatergreaterwashington.org/post/11812/some-seek-alternatives-to-proposed-montgomery-curfew.

3. Cnty. Council, Expedited B. 25-11 (Montgomery Cnty., Md. 2011).

4. *Frequently Asked Questions About the County Executive's Youth Curfew Proposal*, MONTGOMERY CNTY .OFFICE OF PUB. INFO., http://www6.montgomerycountymd.gov/content/pdf/curfew.pdf (last visited April 21, 2014) [hereinafter *FAQs About Curfew Proposal*].

5. *See, e.g.*, Letter from Peter Franchot, Comptroller of Md., to Members of the Montgomery Cnty. Council (Sept. 13, 2011); *see also* Kristi Tousignant, *East County Citizens Advisory Board Supports Teen Curfew*, THEGAZETTE.NET (Oct. 6, 2011), http://www.gazette.net/article/20111006/NEWS/710069814/citizens-advisory-boardsupports-teencurfew&template=gazette.

6. Dan Morse & Michael Laris, *Montgomery County Debates Merits of Teen Curfew*, WASH. POST (Aug. 31, 2011), http://www.washingtonpost.com/local/montgomery-county-debates-merits-of-teencurfew/2011/08/29/gIQAV3S0sJ_story.html; *Full Council Tables Further Action on the Curfew*, STAND UP TO MONTGOMERY COUNTY CURFEW (Dec. 6, 2011), https://sites.google.com/site/standuptothemococurfew/.

voted six to three to table the curfew bill until a future date.[7] The bill has since died as a result of inaction.

Part of what made the decision so difficult in Montgomery County is that the research on the effectiveness of curfew laws has been mixed. Much like in Maryland, the impetus for many of these laws is to reduce juvenile crime and victimization.[8] In general, the premise behind curfew laws is that controlling the hours when young people can be out in public reduces their opportunities to commit or suffer from a crime and also limits their contact with potential victims and offenders.[9] However, studies on whether curfew laws actually do reduce crime have reached inconsistent conclusions.[10]

Some researchers have found that juvenile curfews reduce juvenile crime,[11] the number of youth arrests,[12] both violent and property crimes among youth,[13] gang violence,[14] total crime, and instances of burglary and robbery.[15] But others have found the opposite results, namely the enactment of a juvenile curfew did not reduce total crime,[16] juvenile crime,[17] juvenile arrest rates,[18] total victimization, or juvenile victimization.[19] The latter set of studies appears

7. Victor Zapana, *Montgomery Lawmakers Delay Action on Curfew, Approve Revised Tuition Assistance*, WASH. POST (Dec. 6, 2011), http://www.washingtonpost.com/local/mdpolitics/montgomerylawmakers-delay-curfew-approve-revised-tuitionassistance/2011/12/02/gIQA9LvxaO_story.html.

8. David McDowall et al., *The Impact of Youth Curfew Laws on Juvenile Crime Rates*, CRIME & DELINQUENCY, Jan. 2000, at 76, 77.

9. *Id.* Cities across the U.S. have reported that they feel that their curfews have helped reduce crime on the streets and gang violence in their cities. U.S. CONFERENCE OF MAYORS, A STATUS REPORT ON YOUTH CURFEWS IN AMERICA'S CITIES 3 (1997).

10. *See infra* notes 11-19 and accompanying text.

11. McDowall et al., *supra* note 8, at 84.

12. M.P. Gius, *The Effects of Curfews on Juvenile Criminal Activity: An Individual-Level Analysis*, 18 APPLIED ECON. LETTERS 311, 312-13 (2011).

13. Patrick Kline, *The Impact of Juvenile Curfew Laws on Arrests of Youth and Adults*, 14 AM. L. ECON. REV. 44, 59 (2011).

14. Eric J. Fritsch et al., *Gang Suppression Through Saturation Patrol, Aggressive Curfew, and Truancy Control: A Quasi-Experimental Test of the Dallas Anti-Gang Initiative*, CRIME & DELINQUENCY, Jan. 1999, at 122, 130.

15. A. Lee Hunt & Ken Weiner, *The Impact of a Juvenile Curfew: Suppression and Displacement in Patterns of Juvenile Offenses*, 5 J. POLICE SCI. & ADMIN. 407, 408 (1977).

16. Mike A. Males, *Vernon, Connecticut's Juvenile Curfew: The Circumstances of Youths Cited and Effects on Crime*, 11 CRIM. JUST. POL'Y REV. 254, 262, 265 (2000); Mike Males & Dan Macallair, *An Analysis of Curfew Enforcement and Juvenile Crime in California*, W. CRIMINOLOGY REV., Jan. 1999, at 1, 7 [hereinafter *Analysis of Curfew Enforcement*].

17. *Analysis of Curfew Enforcement*, *supra* note 16, at 7; Danny Cole, *The Effect of a Curfew Law on Juvenile Crime in Washington, D.C.*, 27 AM. J. CRIM. JUST. 217, 222 (2003).

18. Richard D. Sutphen & Janet Ford, *The Effectiveness and Enforcement of a Teen Curfew Law*, J. OF SOC. & SOC. WELFARE, March 2001, at 55, 63.

19. K. Michael Reynolds et al., *Do Juvenile Curfew Laws Work? A Time-Series Analysis of the New Orleans Law*, 17 JUST. Q. 205, 212 (2000).

to have weaker analytic methods than the former set (e.g., few studies used multivariate regressions or nationally representative samples), but overall, the quality of the studies is limited and more research is needed.[20]

Although not the original reason behind juvenile curfew enactment, several studies have found that juvenile curfew laws reduce other youth health consequences. For example, studies have shown that the enactment of a juvenile curfew law reduces juvenile traffic injuries and fatalities,[21] pediatric transports and pediatric trauma transports,[22] and the volume of juvenile trauma cases.[23] Only one study has concluded otherwise, finding that a juvenile curfew did not reduce emergency medical service transports of injured youth, total homicide rates, or youth homicide rates.[24] However, this last study had a restricted time sample (i.e., only three months before and after the enactment of a curfew law) and only used pre-post comparisons and chi-square distributions rather than a time series research design or a multivariate regression analytic method.[25]

Another concern that opponents of juvenile curfew laws have raised in both Montgomery County[26] and nationally[27] is that these laws may be implemented in a discriminatory manner and result in racial profiling. This concern is supported by a 1999 study, which found that the curfew in San Jose was enforced disproportionately on Latino youth.[28] When "compared to youth of other races/ethnicities, Latino youth [were] five times more likely to be arrested for curfew violations than their representation in the youth population."[29] Other people worry that police officers can use curfew laws to

20. Elyse R. Grossman, Are Teen Curfew Laws Effective? A Review of the Literature (Aug. 2014) (unpublished Ph.D. dissertation, University of Maryland, Baltimore County) (on file with author).

21. David T. Levy, *The Effects of Driving Age, Driver Education, and Curfew Laws on Traffic Fatalities of 15-17 Year Olds*, 9 RISK ANALYSIS 569, 572 (1988); David F. Preusser et al., *The Effect of City Curfew Ordinances on Teenage Motor Vehicle Fatalities*, 25 ACCIDENT ANALYSIS & PREVENTION 641, 644 (1993) [hereinafter *Vehicle Fatalities*]; David Preusser, *City Curfew Ordinances and Teenage Motor Vehicle Injury*, 22 ACCIDENT ANALYSIS & PREVENTION 391, 397 (1991) [hereinafter *Vehicle Injury*].

22. Steven J. Weiss et al., *The Effect of a Curfew on Pediatric Out-of-Hospital EMS Responses*, 2 PREHOSPITAL EMERGENCY CARE 184, 187 (1998).

23. David V. Shatz et al., *Effect of a Curfew Law on Juvenile Trauma*, 47 J. TRAUMA: INJ., INFECTION & CRITICAL CARE 1013, 1016 (1999).

24. Harry Moscovitz et al., *The Washington, DC, Youth Curfew: Effect on Transports of Injured Youth and Homicides*, 4 PREHOSPITAL EMERGENCY CARE 294, 297 (2000).

25. *Id.* at 294-295.

26. Morse & Laris, *supra* note 6.

27. *See, e.g.*, Ramon A. Vargas, *New Orleans' Curfew Enforcement Is Racially Biased, Ineffective, Critics Say; but NOPD Chief Disagrees*, TIMES-PICAYUNE (Mar. 15, 2013), http://www.nola.com/crime/index.ssf/2013/03/new_orleans_curfew_enforcement.html.

28. *Analysis of Curfew Enforcement*, *supra* note 16, at 19.

29. *Id.*

get around traditional search requirements by allowing officers to pat-down and search individuals solely based on their age and potential curfew violation.[30]

Although Montgomery County remained divided on this issue, it is perhaps not that surprising as it is reminiscent of how United States (U.S.) courts have tackled cases dealing with juvenile curfew laws.[31] In 1898, the Court of Criminal Appeals of Texas held that the curfew law in the city of Graham was "paternalistic, and . . . an invasion of the personal liberty of the citizen."[32] Since then, courts have been divided over the constitutionality of juvenile curfew laws.[33] They have debated the proper level of scrutiny needed, including whether curfew laws infringe upon a fundamental right of either the juvenile or the parent, and the vagueness and overbreadth of these laws, among other issues.[34] Some opinions strongly support and uphold curfew laws,[35] while others come down on the opposite side.[36] Given that the Supreme Court has denied certiorari to hear juvenile curfew cases,[37] it has been left up to the lower courts, which have thus reached varying conclusions. Some of the inconsistency in the opinions arises because these are state courts and state laws.

Given that some of the research does support the effectiveness of juvenile curfew laws,[38] and that many localities continue to enact these laws,[39] it is

30. *See Daytime Curfews*, HSLDA, http://www.hslda.org/docs/nche/Issues/S/State_Daytime_Curfew.asp (last visited April 21, 2014) (presenting worries about daytime curfews but this may also apply to nighttime curfews as well); *see also* Letter from M.R. Deskins, East County Citizens Advisory Bd., to Montgomery Cnty. Council (Oct. 5, 2011), *available at* http://www6.montgomerycountymd.gov/content/pdf/ECCAB_Curfew_ltr.pdf.

31. *See infra* Part IV.

32. *Ex parte* McCarver, 46 S.W. 936, 937 (Tex. Crim. App. 1898).

33. *See infra* Part IV.

34. *See infra* Part IV.

35. *See infra* Part IV; *see also* City of Eastlake v. Ruggiero, 220 N.E.2d. 126, 128 (Ohio Ct. App. 1966) ("We feel that curfew ordinances for minors are justified as necessary police regulations to control the presence of juveniles in public places at nighttime with the attendant risk of mischief, and that such ordinances promote the safety and good order of the community by reducing the incidence of juvenile criminal activity").

36. *See infra* Part IV; *see also* People v. Chambers, 335 N.E.2d. 612, 618 (Ill. App. Ct. 1975) ("[The] curfew law which restrains a segment of our society from freely walking the streets when no emergency exists is incompatible with the basic principles upon which free societies are founded. Since the curfew statute violates the basic spirits of a free society as well as the specific constitutional guarantees . . . it violates both the federal and state constitutions").

37. *See generally* Bykofsky v. Borough of Middletown, 401 F.Supp. 1242 (M.D. Pa. 1975); Qutb v. Strauss, 11 F.3d 488 (5th Cir. 1993); Schliefer by Schleifer v. City of Charlottesville, 159 F.3d 843 (4th Circ. 1998).

38. *See supra* notes 21-23 and accompanying text.

39. *See* William Ruefle & Kenneth M. Reynolds, *Keep Them at Home: Juvenile Curfew Ordinances in 200 American Cities*, 15 AM. J. POLICE 63, 63-84 (1996).

important for policymakers to draft these laws in such a way as to minimize their chances of getting overturned by the court. No statute can be written in such a manner as to guarantee that the courts will uphold it. However, one can learn from cases where the court has overturned a juvenile curfew ordinance and try to avoid problem areas pointed out in those cases. This article will start by giving a history of curfew laws, a summary of claims minors and parents have used to challenge curfew laws, and a history of cases involving curfew laws.[40] Next, it will use a model for policymaking called the "Policy Cycle" to guide the recommendations offered for policymakers when drafting these laws.[41]

II. HISTORY OF CURFEW LAWS

Overall, curfew laws seek to provide general protection to youth and adults by restricting the times that children of certain ages are allowed to occupy public places or streets. These laws often contain exemptions for youth accompanied by an adult, responding to an emergency, or traveling to or from school, work, or a religious service, among others.[42] The first curfew law was enacted in Omaha, Nebraska in 1880.[43] In 1884, President Benjamin Harrison endorsed curfews, saying that they are "the most important municipal regulation for the protection of the children of American homes, from the vices of the street."[44] By 1900, over 3,000 U.S. jurisdictions had enacted youth curfews.[45] During World War II, juvenile delinquency became a national concern again so juvenile curfew enforcement increased.[46] After the war, the population boom led to an increase in the number of teenagers, which in turn led to an increase in the number of cities enacting juvenile curfews.[47] By 1957, over half of the 109 cities with populations over 100,000 had juvenile curfews in place.[48]

However, organizations such as the American Civil Liberties Union began to challenge cities' curfew laws arguing that they violated civil rights, especially the First and Fourteenth Amendments of the U.S. Constitution.[49] Thus, many cities either "allowed enforcement of their laws to lapse or in some

40. *See infra* Parts II-IV.

41. *See infra* Part V.

42. Craig Hemmens & Katherine Bennet, *Juvenile Curfews and the Courts: Judicial Response to a Not-So-New Crime Control Strategy*, 45 CRIME & DELINQUENCY 99, 111 (1999).

43. *Id*. at 100.

44. Note, *Curfew Ordinances and the Control of Nocturnal Juvenile Crime*. 107 U. PA. L. REV. 66, 66 n. 5 (1958); *see also* Hemmens & Bennett, *supra* note 42, at 100.

45. Hemmens & Bennett, *supra* note 42, at 100.

46. *Id.*

47. *Id.*

48. *Id.*

49. Kline, *supra* note 13, at 47.

cases actually repealed existing ordinances."[50] Things began to change again in 1991 when Dallas, Texas enacted a new curfew ordinance that became a model for many American cities.[51] It was narrowly tailored to apply to youth of certain ages during specific times and contained numerous carefully crafted exemptions.[52] Other cities also started crafting their curfew ordinances in ways that withstood legal challenges.[53]

In 1996, President Bill Clinton also endorsed curfews, explaining "[t]hey help keep our kids out of harm's way . . . [and t]hey give parents a tool to impart discipline, respect and rules at an awkward and difficult time in children's lives."[54] By 2009, seventy-eight of the ninety-two cities with populations over 180,000 (or eighty-four percent) had enacted youth curfews.[55]

III. CLAIMS CHALLENGING CURFEW LAWS BROUGHT BY MINORS AND PARENTS

Both minors and parents have raised a variety of claims challenging curfew laws. These challenges include that the statutes are vague or overbroad, or that they violate minors' Fourteenth Amendment equal protection rights, minors' or parents' Fourteenth Amendment due process rights, minors' First Amendment freedoms of religion or assembly, or minors' rights of interstate travel under the Commerce Clause.

Two challenges that minors and parents often bring include vagueness[56] and overbreadth.[57] A statute is void for vagueness if it fails to give a person of ordinary intelligence fair notice of what is prohibited and to provide an explicit standard for officers enforcing it.[58] A statute is void for overbreadth when a law restricts a substantial amount of protected speech or conduct, and thus restricts other activities that in ordinary circumstances would be protected expressive or associational rights.[59]

The first section of the Fourteenth Amendment to the U.S. Constitution includes two clauses—the Due Process Clause and the Equal Protection

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.* at 48.

54. John Wildermuth, *Clinton Backs Youth Curfews, He Proposes Teens Be Home by 8 PM*, SAN FRANCISCO CHRONICLE (May 31, 1996), http://www.sfgate.com/cgibin/article.cgi?f=/c/a/1996/05/31/MN3306.DTL&ao=all.

55. *FAQs About Curfew Proposal*, *supra* note 4; Tony Favro, *Youth Curfews Popular With American Cities But Effectiveness and Legality Are Questioned*, CITY MAYORS SOC'Y (July 21, 2009), http://www.citymayors.com/society/usa-youth-curfews.html#Anchor-History-49575.

56. *See infra* Part V.B.1.

57. *See infra* Part V.B.2.

58. City of Chicago v. Morales, 527 U.S. 41, 56 (1999).

59. Aladdin's Castle, Inc. v. City of Mesquite, 630 F.2d 1029, 1038 (5th Cir. 1980).

Clause—that many minors and parents use as the basis for their challenges to curfew laws. Under the Due Process Clause, state and local government officials may not deprive persons of life, liberty, or property without reasonable legal protections (i.e., due process).[60] Both minors and parents argue that curfew laws restrict both minors' and parents' liberty under this clause. Minors argue that curfew laws interfere with their ability to be out in public places, while parents argue that curfew laws interfere with their ability to raise their child without governmental interference.[61] Under the Equal Protection Clause, a state must provide equal protection under the law to all people within its jurisdiction.[62] Under both clauses, courts use a high level of scrutiny to review the statute if the law infringes upon a fundamental right, which include the right to travel, the right to privacy, the right to vote, and all First Amendment rights.[63] Courts have not reached a consensus on whether the "right to movement" is a fundamental right.[64]

The First Amendment guarantees citizens the right to practice their religion without governmental interference, the right to assemble, and the right to unabridged speech or press.[65] Minors have argued that curfew laws that contain few exceptions (such as the ability to attend a religious service, stay out late to vote at the polls,[66] or attend a political rally) violate their First Amendment rights.[67] The final challenge that minors have raised is that curfew laws restrict their rights of interstate travel under the Commerce Clause.[68]

60. U.S. CONST. amend. XIV, § 1.

61. *See infra* Parts IV, V.A, and V.B.

62. U.S. CONST. amend. XIV, § 1.

63. Johnson v. City of Opelousas, 658 F.2d 1065, 1072 (5th Cir. 1981); Dunn v. Blumstein, 405 U.S. 330, 336 (1972).

64. David A. Herman, *Juvenile Curfews and the Breakdown of the Tiered Approach to Equal Protection*, 28 N.Y.U. L. REV. 1857, 1860-61 (2007) (noting that courts have struggled with 'free movement' claims related to curfew laws because these laws do "not fit neatly into the formal 'tiers of scrutiny' framework" and forcing them into the formal framework has led to "inconsistent results").

65. U.S. CONST. amend. I.

66. Normally the right to vote would only apply to people ages eighteen years or older and thus this would not be an issue for minors affected by curfew laws. However, the court in *City of Maquoketa v. Russell & Campbell* specifically pointed out that "[t]he ordinance makes no exception for seventeen-year-olds who are eligible to vote at precinct caucuses. *See* IOWA CODE § 43.91. In Iowa, caucuses traditionally are held in the evenings, and a seventeen-year-old returning home from such an event lasting beyond 11:00 p.m. would be in violation of the ordinance." City of Maquoketa v. Russell & Campbell, 484 N.W.2d 179, 185 (Iowa 1992).

67. McCollester v. City of Keene, 586 F.Supp. 1381, 1384 (D.N.H. 1984).

68. *See, e.g.*, Johnson v. City of Opelousas, 658 F.2d 1065, 1072 (5th Cir. 1981).

IV. HISTORY OF CASES INVOLVING CURFEW LAWS

The first case involving nighttime juvenile curfew laws was *Ex parte McCarver* in 1898.[69] As discussed above, the Court of Criminal Appeals of Texas found the curfew law unconstitutional and overturned it because it attempted "to usurp parental functions" and restricted the personal liberties of citizens.[70] No court cases regarding juvenile curfew laws were reported until *People v. Walton* in 1945, in which the Superior Court of California upheld the curfew law in question.[71] After that, courts reached different opinions about the constitutionality of these laws,[72] until 1978. It would be another ten years and eight court cases before another case was reported where a court again upheld a curfew law.[73]

One of the reasons for this gap was that the Supreme Court decided *Bellotti v. Baird* in 1979.[74] The case examined a law that required minors to get parental consent for an abortion.[75] The Supreme Court held that "a child, merely on account of his minority, is not beyond the protection of the Constitution."[76] Because the majority of the lower courts agreed that a curfew law would be unconstitutional if applied to adults, at first many of the lower courts used this decision to support their holdings that curfew laws were unconstitutional if also applied to youth.[77] However, the Supreme Court in *Bellotti* also concluded that the "rights of children cannot be equated with those of adults."[78] It created a three-part test to help lower courts decide when the government could infringe upon the constitutional rights of children in a manner that would otherwise be unconstitutional if enforced upon adults.[79] Courts needed to examine: "[1.] the peculiar vulnerability of children; [2.] their inability to make critical decisions in an informed, mature manner; and [3.] the importance of the parental role in child rearing."[80]

69. *Ex parte* McCarver, 46 S.W. 936, 936 (Tex. Crim. App. 1898).

70. *Id.* at 937.

71. People v. Walton, 161 P.2d 498, 503 (Cal.App.2d Supp. 1945).

72. *See, e.g.*, *In the matter of* Nancy C., 28 Cal. App. 3d 747, 757 (Cal. Ct. App. 1972) (holding that the juvenile curfew was not unconstitutionally overbroad). *But see, e.g.*, Naprstek v. City of Norwich, 545 F.2d 815, 818 (2d Cir. 1976) (holding that the juvenile curfew was unconstitutionally vague).

73. *See generally* City of Panora v. Simmons, 445 N.W.2d 363 (Iowa 1989).

74. *See generally* Bellotti v. Baird, 443 U.S. 622 (1979).

75. *Id.*

76. *Id.* at 633.

77. *See, e.g.*, Johnson v. City of Opelousas, 658 F.2d 1065, 1073 (1981).

78. *Bellotti*, 443 U.S. at 634.

79. *Id.*

80. *Id.*

Overall, there have been forty-one cases reported examining the constitutionality of juvenile curfew laws,[81] with twenty-five of them (or sixty percent) finding the laws to be unconstitutional.[82] These cases have occurred in different courts (thirty-three in state[83] and eight in federal[84]) all across the U.S. Cases where courts have upheld the juvenile curfew laws have occurred in Arizona, Colorado, Idaho, Illinois, Massachusetts, and West Virginia.[85] Courts in Hawaii, Indiana, Maryland, New Hampshire, New Jersey, New York, Oklahoma, Texas, and Washington have overturned these laws.[86] Because these are local laws, there are a few states that have both upheld and overturned different juvenile curfew laws in various cases. These include California, Florida, Iowa, and Ohio.[87] So far, the Supreme Court has denied certiorari in three juvenile curfew law cases[88] leaving ultimate authority to the states.

81. These cases only include those that debated the constitutionality of nighttime juvenile curfews and thus did not include cases, which dealt with daytime or emergency curfews. *See, e.g.*, People v. Kearse, 295 N.Y.S.2d 192 (N.Y. 1968) (examining the constitutionality of an emergency curfew as applied to all citizens and thus not relevant to this analysis); *see also* City of Shreveport v. Brewer, 72 So.2d 308 (1954) (examining the constitutionality of a curfew applied to all citizens and thus not relevant to this analysis). Moreover, it also did not include cases that only mentioned the juvenile curfew law in passing and did not actually debate the constitutionality of it. *See, e.g.*, *In re* Francis W., 42 Cal.App.3d 892 (Cal. Ct. App. 1974) (mentioning the juvenile curfew ordinance as the reason the police officer stopped the car but focusing on whether the police officer was justified in stopping the vehicle and undertaking investigation and not on the constitutionality of the curfew ordinance itself).

82. *See infra* Table 1. The number forty-one includes two cases that were ultimately consolidated into one. Thus, the total number of cases could arguably be forty. However, for purposes of the discussions in this article, the total number of cases is forty-one. *See* State of Florida v. J.P., 907 So. 2d 1101, 1106 (Fla. 2004) (where two cases were consolidated into one). *See also infra* Table 2 (setting forth the cases where courts found the juvenile curfew law constitutional).

83. *See infra* Table 3, Table 4.

84. *See infra* Table 5, Table 6. Of the eight court cases occurring in federal court, half of them (four cases) upheld the laws as constitutional. *See infra* Table 6.

85. *See infra* Table 4.

86. *See infra* Table 3.

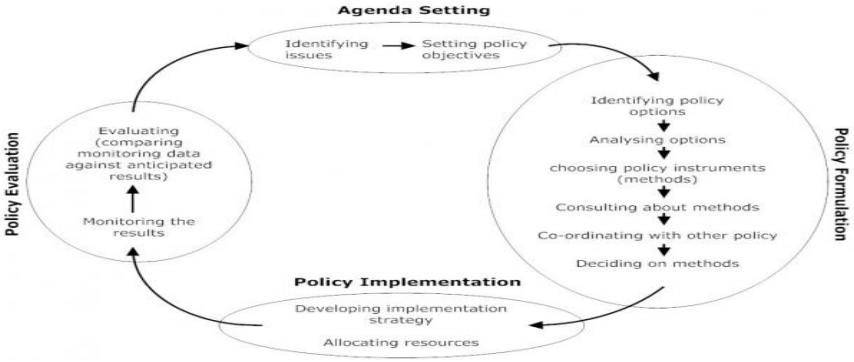
87. *See infra* Table 3, Table 4.

88. In 1976, the U.S. Supreme Court denied certiorari in Bykofsky v. Borough of Middletown, 401 F.Supp. 1242 (M.D. Pa. 1975). This was the first reported juvenile curfew ordinance to be challenged in a federal court and upheld by the Third Circuit under a rational basis scrutiny review. *See* Patryk J. Chudy, *Doctrinal Reconstruction: Reconciling Conflicting Standards in Adjudicating Juvenile Curfew Challenges*, 85 CORNELL L. REV. 518, 527-29 (2000). In 1994, the Supreme Court again denied certiorari in Qutb v. Bartlett, 11 F.3d 488 (5th Circ. 1993). This came after the Fifth Circuit had upheld a Dallas, Texas juvenile curfew ordinance under a strict scrutiny review. *See* Chudy, *supra* note 88, at 530, 533-36. In 1998, the Supreme Court denied certiorari for the third time, in Schliefer by Schliefer v. Charlottesville, 159 F.3d 843 (4th Cir. 1998). This came after the Third Circuit again upheld a juvenile curfew ordinance –

V. THE "POLICY CYCLE" AND RECOMMENDATIONS FOR POLICYMAKERS

The Policy Cycle is a framework for understanding the creation of policy in this country and is based on work by Harold Lasswell.[89] It is one of "the most widely applied frameworks" with a focus on "generic features of the policy process rather than on specific actors or institutions."[90] The Policy Cycle has four overarching steps (see figure one, below) that include: (1) Agenda Setting and Problem Identification, (2) Policy Formation and Decision-Making, (3) Policy Implementation, and (4) Evaluation and Termination.[91] It is important for policymakers to have a general understanding of how policy is created and therefore this section will explain each of the four steps and give recommendations for drafting curfew laws as they apply to those steps.

Figure 1: Harold Lasswell's "Policy Cycle"[92]



A. Step 1: Agenda Setting and Problem Identification

Under the first step, "Agenda Setting and Problem Identification," the issue is recognized as a problem and brought to the attention of the

this time under an intermediate scrutiny review. *See* Chudy, *supra* note 88, at 551-54. However, "[e]ven the Supreme Court's denial of certiorari cannot provide any guidance for the courts. Every time the Supreme Court has denied certiorari, the Court of Appeals . . . decision[s were] based on a different constitutional theory and therefore a different level of scrutiny." Orly Jashinsky, *Liberty For All? Juvenile Curfews: Always an Unconstitutional and Ineffective Solution*, 4 RUTGERS J. L. & PUB. POL'Y 546, 553 (2007).

89. HANDBOOK OF PUBLIC POLICY ANALYSIS: THEORY, POLITICS, AND METHODS 43 (F. Fischer, G.J. Miller, and M.S. Sidney, eds., 2007) [hereinafter HANDBOOK OF PUBLIC POLICY].

90. *Id. at* 45.

91. *Id. at* 45-53.

92. There are many diagrams of Harold Lasswell's "Policy Cycle". This one came from the New Zealand Ministry for the Environment website. *See* GERALD WILLIS, NEW ZEALAND MINISTRY FOR THE ENVIRONMENT, ME NO. 482, DRAFTING ISSUES, OBJECTIVES, POLICIES, AND METHODS IN REGIONAL POLICY STATEMENTS AND DISTRICT PLANS 3 (2003), *available at* https://www.mfe.govt.nz/publications/rma/drafting-issues-jul03/html/page2.html.

policymakers.[93] Here, the problem would be high rates of crime and violence or other health consequences. Policymakers research the problem and consider different options and strategies such as the need for a juvenile curfew as a preventative measure.[94] Given this, it is important that advocates of juvenile curfews conduct this research, and that it is reflected in the purpose or preamble provisions of the law.

Recommendation 1: Conduct a study of juvenile crime and victimization rates prior to enacting the juvenile curfew ordinance and include it in the purpose section of the ordinance.

As in Montgomery County, Maryland, politicians or advocates generally raise the issue of juvenile curfew laws after a violent incident or two have occurred. However, courts generally prefer statistics demonstrating a crime problem in the specific area rather than anecdotal stories or national data.[95] This issue often arises after the court's decision on the proper level of scrutiny needed.

There are three levels of scrutiny used by courts when evaluating the constitutionality of an ordinance. Under the most rigorous standard—strict scrutiny—"the classification created by the juvenile curfew ordinance must be narrowly tailored to promote a compelling government interest" and must be the least restrictive means available.[96] Courts use strict scrutiny when a law implicates a fundamental right or suspect class. In juvenile curfew cases, minors and their parents argue that the fundamental rights implicated include the freedom of movement,[97] the freedoms of speech, religion, or assembly as guaranteed by the First Amendment,[98] or the freedom to travel as guaranteed by the Commerce Clause.[99] Age is not considered a suspect class.[100] Under the least rigorous standard—rational basis review—there needs to be "a rational relationship between the goals of the ordinance and the means chosen."[101] In between strict scrutiny and rational basis is intermediate scrutiny where "the ordinance [must be] 'substantially related' to the achievement of 'important'

93. *Id. at* 45.

94. *Id. at* 48.

95. *See, e.g.*, Qutb. v. Strauss, 11 F.3d 488, 493 (5th Cir.1993).

96. Nunez by Nunez v. City of San Diego, 114 F.3d 935, 946 (9th Circ. 1997), (citing Plyler v. Doe, 457 U.S. 202, 217 (1982)); *see also* Commonwealth v. Weston, 913 N.E.2d 832, 842 (Mass. 2009).

97. *See, e.g.*, Johnson v. City of Opelousas, 658 F.2d 1065, 1068 (5th Cir. 1981).

98. *Id.*

99. *Id.*

100. *See Commonwealth v. Weston*, 913 N.E.2d 832, 842 (Mass. 2009). Since age is not a suspect class, Equal Protection arguments claiming that people under seventeen or eighteen are being treated differently than those over seventeen or eighteen generally fail. *Id.*

101. City of Panora v. Simmons, 445 N.W.2d 363, 369 (Iowa 1989).

government interests."[102] After the court decides on the proper level of scrutiny, it often looks at the data to determine whether the standard has been met. Whereas only a few statutes survive the strict scrutiny test, only a few fail the rational basis test.

The court, in each of the forty-one cases reported, varied on which level of scrutiny it used to examine the constitutionality of juvenile curfew laws. The court did not always discuss which level of scrutiny it used, but in some cases it was possible to determine by the use of certain words, such as "compelling government interest" or "substantially related". One-third (or fifteen) of the cases used strict scrutiny whereas only five cases used rational basis.[103] Nine of the cases used intermediate scrutiny.[104] The other twelve did not mention which level of scrutiny was used and it was impossible to determine from the language provided.[105]

For example, in *City of Sumner v. Walsh*, a parent appealed after a court found him guilty of allowing his son to violate the Sumner juvenile curfew ordinance.[106] Walsh argued that the ordinance violated the fundamental rights of minors and their parents.[107] Although not mentioned in the majority opinion, the concurring judge discussed how there is a "fundamental right to move freely in public places" which is "rooted in the First Amendment's protection of association and expression and in the fundamental liberties protected by the Fifth Amendment."[108] He pointed out that courts use strict scrutiny when an ordinance infringes upon a fundamental right.[109] Moreover, he explained that even though the level of scrutiny used for a juvenile curfew ordinance is inconsistent across states, in the jurisdiction in question, strict scrutiny is used.[110] Next, the judge commented on the need for evidence. He remarked:

> the dissent seems satisfied that state reports on the rise of juvenile crime, and national surveys on curfews, is sufficient evidence upon which a small community would be justified in imprisoning all children within their homes . . . I disagree with the dissent and would require some evidence that correlates directly [sic] with the specific problems of the specific community sought to be addressed by the ordinance.[111]

102. Anonymous v. City of Rochester, 915 N.E.2d 593, 598 (N.Y. 2009), (citing Craig v. Boren, 429 U.S. 190, 197 (1976)).

103. *See infra* Table 1, Table 2.

104. *See infra* Table 1, Table 2.

105. *See infra* Table 1, Table 2.

106. City of Sumner v. Walsh, 61 P.3d 1111, 1114 (Wash. 2003).

107. *Id.* (arguing also the law was void for vagueness).

108. *Id.* at 1118.

109. *Id.*

110. *Id.*

111. *City of Sumner*, 61 P.3d at 1119.

Without this evidence, he could not find that the City of Sumner had a compelling interest in enacting a juvenile curfew ordinance that infringed upon the rights of the children and adults in the city.[112]

In *Qutb v. Strauss*, the U.S. Circuit Court of Appeals "assume[d] without deciding" that the right to move about freely in public was a fundamental right and therefore used strict scrutiny on a Dallas juvenile curfew ordinance to determine if it violated the Equal Protection Clause of the Fourteenth Amendment.[113] The plaintiffs conceded that the state's interest was compelling so the court had to decide if the curfew ordinance was narrowly tailored enough to achieve that interest.[114] The court discussed the evidence that the city had put forward. It included statistics about: (a) how juvenile crime increases proportionally with age, (b) the increase in juvenile arrests between 1989 and 1990 in Dallas, (c) the total number of juveniles arrested for murders, sex offenses, robberies, and aggravated assaults, and crimes against property before the curfew was enacted, and (d) how murders, aggravated assaults, robberies, and rapes are most likely to occur between certain hours at night and in public places.[115]

Although the court found that the curfew ordinance was narrowly tailored and thus upheld the law,[116] it still pointed out that "the city was unable to provide precise data concerning the number of juveniles who commit crimes during the curfew hours, or the number of juvenile victims of crimes committed during the curfew."[117] In a footnote, the court further pointed out that it would not "insist upon detailed studies of the precise severity, nature, and characteristics of the juvenile crime problem in analyzing whether the ordinance meets constitutional muster when it is conceded that the juvenile crime problem in Dallas constitutes a compelling state interest."[118] This, therefore, implies that more data might have been required had the plaintiffs not conceded this.

In *Anonymous v. City of Rochester*, the Court of Appeals of New York explained its use of intermediate scrutiny:

> Rather than categorically applying strict scrutiny to a curfew which implicates a minor's right to free movement simply because the same right, if possessed by an adult, would be fundamental, courts have found that intermediate scrutiny is better suited to address the complexities of curfew ordinances—it is sufficiently skeptical and probing to provide rigorous protection of

112. *Id*.
113. Qutb v. Strauss, 11 F.3d 488, 492 (5th Cir.1993).
114. *Id*. at 493.
115. *Id*.
116. *Id*. at 496.
117. *Id*. at 493.
118. *Qutb*, 11 F.3d at 493.

> constitutional rights yet flexible enough to accommodate legislation that is carefully drafted to address the vulnerabilities particular to minors.[119]

In this case, the court found that the City had not offered enough proof to show that the burdens imposed on minors by the curfew law were "substantially related" to the goals of protecting minors and preventing juvenile crime.[120] The court explained that the crime statistics that the City did offer did not support the objectives of the ordinance.[121] From the evidence, the court concluded that minors are more likely to commit crimes outside of curfew hours and that it is adults, rather than minors, who commit and are victims of the majority of crimes during curfew hours.[122] Lastly, the court noted that "the methodology and scope of the statistics are plainly over-inclusive for purposes of studying the effectiveness of the curfew."[123]

After using the intermediate scrutiny standard to review the law, the District Court of Appeals of Florida upheld a juvenile curfew ordinance in *State v. TM, AN, and DM*.[124] In that case, the circuit court had previously dismissed the case concluding that the juveniles' parents had a fundamental right to raise their children without government intrusion.[125] The State appealed and the district court readdressed each of the juveniles' challenges to the ordinance, which included whether they had a fundamental right to freely move about in a public place or establishment at night without adult supervision.[126] The court was satisfied with the evidence that the city provided which included data demonstrating how crime rates decreased after the implementation of the ordinance.[127] However, the dissent disagreed, arguing that the "majority's assessment of this justification for the ordinance [was] undermined by the lack of a meaningful factual basis."[128] The dissenting judge found that the evidence was irrelevant as it was compiled after the curfew went into effect.[129] He questioned whether the city "had a particularly vexing juvenile crime problem when it decided to enact the curfew, whether the

119. Anonymous v. City of Rochester, 915 N.E.2d 593, 598 (N.Y. 2009).

120. *Id.* at 599.

121. *Id.* at 600.

122. *Id.*

123. *Id.*

124. State of Florida v. T.M., D.N., & A.N., 761 So.2d 1140, 1150 (Fla. Dist. Ct. App. 2000).

125. *Id.* at 1144.

126. *Id.* at 1145-46. They also challenged the ordinance as being unconstitutionally vague, overly broad, impermissibly inconsistent with the State model curfew statute and preempted by the State. *Id.* at 1144.

127. *Id.* at 1147.

128. *State of Florida*, 761 So.2d at. 1152 (Northcutt dissenting).

129. *Id.*

juvenile crime rate was increasing or decreasing, [and] whether crimes were being committed by a large number of youths or only by a relative few."[130]

B. Step 2: Policy Formation and Decision-Making

During this stage of the policy cycle, "expressed problems, proposals, and demands are transformed into government programs. Policy formulation and adoption includes the definition of objectives—what should be achieved with the policy—and the consideration of different action alternatives."[131] In this case, it is important for policymakers to define terms, create exemptions, and discuss proper penalties as they draft juvenile curfew ordinances.

Recommendation 2: Avoid the use of terms that are not defined.

People have also challenged juvenile curfew ordinances on vagueness grounds. A statute is vague if it "does not give people of ordinary intelligence fair notice of what constitutes forbidden conduct"[132] and is worded "as to encourage arbitrary enforcement."[133] This problem often arises because legislators use imprecise words without providing definitions.

For example, the Ohio court overturned a juvenile curfew ordinance in *In Re Mosier* as being unconstitutionally invalid for vagueness.[134] The juvenile curfew ordinance in question prevented a minor from "remain[ing] in or upon any public place or establishment" during certain hours.[135] The court pointed out that the ordinance lacked a preamble setting forth the purpose of the statute and a definitional section defining the terms used.[136] Therefore, the court was forced to rely on the "standard dictionary definitions" of the words "remain" and "public place or establishment" to determine how to interpret the ordinance.[137] The court also used the dictionary to define words in the exemption allowing a "minor upon an errand or other legitimate business directed by the minor's parents."[138] Another exemption allowed the chief of police to grant permission to groups who wanted to hold late night activities. The court concluded the ordinance "provides no standards at all to guide the

130. *Id.*

131. HANDBOOK OF PUBLIC POLICY, *supra* note 89, at 48.

132. K.L.J. v. State of Florida, 581 So.2d 920, 921 (Fla. Dist. Ct. App. 1991) (citing Papchristou v. City of Jacksonville, 92 S.Ct. 839 (1972)).

133. Naprstek v. City of Norwich, 545 F.2d 815, 818 (2d Cir. 1976).

134. *In re* Mosier, 394 N.E.2d 368, 368 (Ohio Ct. App. 1978). The Court also held that the ordinance deprived minors of fundamental rights under the First Amendment and the due process clause of the Fourteenth Amendment, violated the Equal Protection Clause of the Fourteenth Amendment, and was overly broad. *Id.*

135. *Id.*

136. *Id.* at 370.

137. *Id.*

138. *Id.* at 371.

chief of police and leaves it up to his own personal predilections and beliefs . . . [t]his is an unconstitutional delegation of legislative authority and is unconstitutionally vague."[139]

Although courts can sometimes rely on a secondary source such as a dictionary, to define a word, sometimes the word is just too vague. In *Brown v. Ashton*, the minors challenged four terms in the exemptions as vague: "bona fide organization," "cultural, scholastic, athletic, or recreational activity," "supervised," and "gainful lawful employment."[140] The court found that the latter three terms were self-explanatory, but had trouble with the first term because "'[b]ona fide' is not explained in the ordinance, nor does the ordinance specify who is to say, and under what standards, an organization is to be regarded as 'bona fide.'"[141] This vagueness was one of the reasons that the court overturned this ordinance.[142]

Similarly, in *Betancourt v. Town of West New York*, the Superior Court of New Jersey also overturned the ordinance because of vagueness.[143] It held that terms such as "'social events,' 'cultural events,' 'activities sponsored by a community organization,' 'direct transit,' [and] 'errand involving a medical emergency'" were vague and "open to differing interpretation by reasonable individuals."[144] Overall, the court found that "the ordinance's silence opens the door to subjective police evaluation of what conduct is proscribed."[145]

Courts may also find a statute vague if it omits key terms. For example, in *Naprstek v. City of Norwich*, minors challenged the curfew ordinance as being unconstitutionally vague, because although it restricted youth from being out on the streets after 11:00 P.M. on Sundays through Thursdays and after midnight on Fridays and Saturdays, it did not specify an ending time for the curfew.[146] The U.S. Circuit Court of Appeals explained that it is this omission that made the ordinance void for vagueness.[147] It concluded that "the lack of a termination time renders the ordinance susceptible to arbitrary, capricious and erratic enforcement, and therefore it is unconstitutional in its application."[148]

139. *In re* Mosier, 394 N.E.2d at 377.

140. Brown v. Ashton, 611 A.2d 599, 610 (Md. 1992).

141. *Id.*

142. *Id.* at 611. The court also concluded that the ordinance impinged upon minors' fundamental rights and was not justified by any compelling governmental interest. *Id.* at 609.

143. Bentacourt v. Town of West New York, 769 A.2d 1065, 1065 (N.J. Super. Ct. App. Div. 2001). Although the plaintiffs contended that the ordinance was invalid for a number of reasons, the court did not address all of the contentions because it found it to be unconstitutionally vague. *Id.* at 1068.

144. *Id.* at 1070.

145. *Id.*

146. Naprstek v. City of Norwich, 545 F.2d 815, 816-17 (2d Cir. 1976).

147. *Id.* at 818.

148. *Id.*

Many of the problems in each of these cases could have been resolved if the legislature had included a definitional section. In *Bykofsky v. Borough of Middletown*, a mother and her son challenged the curfew ordinance on a number of grounds including vagueness of terms.[149] These terms included definitions for the words "borough," "minor," "parent," "remain," "street," "time of night," and "year of age."[150] Even with a definitional section, the district court still held that a few of the terms in the ordinance were unconstitutional due to vagueness.[151] However, the court said that "the Constitution does not require impossible standards . . . while there must be definiteness and ascertainable standards so that men of common intelligence can apprehend the meaning of the ordinance, perfect precision is neither possible nor constitutionally required."[152] In the end, the statute survived the constitutional challenge and the court upheld it, finding that that majority of the statute was constitutional and requiring the removal of the few sections that it had stricken due to vagueness.[153]

Recommendation 3: Avoid drafting statutes that are considered overly broad because they fail to include carefully crafted exemptions to the ordinance.

Many of the juvenile curfew ordinances contain exemptions for situations where a minor may be out in public or on the streets after hours without violating the law. These exemptions fall into ten categories: if the minor was (1) upon an emergency errand, (2) upon an errand directed by the parent, guardian, or other adult, (3) attending or returning home from a meeting, entertainment, recreational activity, or dance, (4) in a public place for the specific purpose of exercising fundamental rights such as freedom of speech, religion, or assembly, (5) emancipated or married, (6) engaged in interstate travel, or (7) on the sidewalk in front of his house or his next-door neighbor's house. The three most common exemptions were: (8) when minors were accompanied by a parent or guardian,[154] (9) engaged in a lawful employment activity or going to or returning from his place of employment,[155] or (10)

149. Bykofsky v. Borough of Middletown, 401 F.Supp. 1242, 1248 (M.D. Pa. 1975). Other grounds included infringement upon the rights of minors to travel, the rights of minors under the First Amendment, the rights of minors under Equal Protection and the rights of parents to control the upbringing of their children. *Id.* In the end, the court upheld the law. *Id.* at 1266.

150. *Id*. at 1268.

151. *Id.* at 1249-52. *See infra* Part IV.B.1.

152. *Id.* at 1253.

153. *Bykofsky v. Borough of Middletown*, 401 F.Supp. at 1266.

154. Forty of the forty-one cases (or ninety-eight percent) contained this exemption. *See infra* Table 7.

155. Twenty-six of the forty-one cases (or sixty-three percent) contained this exemption. *See infra* Table 7.

accompanied by another adult person.[156] A few exemptions did not fall into any category and included situations such as where the minor was with his spouse,[157] on "legitimate business,"[158] or had obtained a specific permit.[159]

Overall, the juvenile curfew ordinances that courts upheld were more likely to contain exemptions than the juvenile curfew ordinances that courts overturned. For example, fifty percent of ordinances found constitutional contained an exemption for when a minor was exercising a fundamental right compared to only twenty percent of ordinances found unconstitutional.[160] The exemptions for when a minor was on an emergency errand or on the sidewalk were contained in sixty-three percent and thirty-eight percent of ordinances upheld, respectively, and in only forty percent and twelve percent of ordinances overturned.[161]

The issue of the number and type of exemptions included arises when a minor or his parent argues that the ordinance in question is unconstitutionally overbroad because it infringes upon expressive or associational rights guaranteed by the First Amendment. To be void for overbreadth, an ordinance "sweeps a broad range of innocent behavior into the category of prohibited conduct."[162] Courts have thus used the presence or lack of exemptions to uphold or overturn juvenile curfew ordinances facing challenges of overbreadth.

For example, in *Johnson v. City of Opelousas*, a minor and his mother asserted a broad challenge to the constitutionality of the curfew ordinance.[163] They claimed that the curfew ordinance was overly broad and violated the minor's rights of freedom of speech, freedom of association, freedom of assembly, and freedom of religion under the First and Fourteenth Amendments, because the only exemptions to the juvenile curfew were for minors accompanied by a parent or "responsible adult" or on an emergency errand.[164] The U.S. Circuit Court of Appeals pointed out that under this law, a

156. This is usually someone that the parent / guardian has given permission to, but sometimes this is any person over the age of twenty-one. Twenty-nine of the forty-one cases (or seventy-one percent) contained this exemption. *See infra* Table 7.

157. *In re* Doe, 513 P.2d 1385, 1386 (Haw. 1973).

158. *See generally In the matter of* Appeal in Maricopa Country, 887 P.2d 599 (Ariz. Ct. App. 1994).

159. Bykofsky v. Borough of Middletown, 401 F.Supp. 1242, 1247 (M.D. Pa. 1975).

160. *See infra* Table 8, Table 9.

161. *See infra* Table 8, Table 9.

162. McCollester v. City of Keene, 586 F. Supp. 1381, 1384 (D.N.H. 1984).

163. Johnson v. City of Opelousas, 658 F.2d 1065, 1067 (5th. Cir. 1981).

164. *Id.* at 1071. Other claims included that the law was vague and overbroad; violated the minor's substantive due process rights to move freely under the Fourteenth Amendment; violated the parents' rights to direct the upbringing of their children and guarantee family autonomy under the Fourteenth Amendment; violated the minor's rights of interstate travel under the commerce clause; and, violated the equal protection clause of the Fourteenth Amendment. *Id.* at 1068.

minor is prohibited from engaging in a number of activities such as attending a religious event, school meeting, or organized dance, participating in legitimate employment, or just being on the sidewalk in front of his house.[165] Although the court says that a curfew ordinance may be valid if narrowly drawn, in this case "since the absence of exceptions in the curfew ordinance precludes a narrowing construction, we are compelled to rule that the ordinance is constitutionally overbroad."[166] The same situation occurs in *McCollester v. City of Keene*, where the plaintiffs argued that the law was overbroad.[167] There, the U.S. District Court found that because of the lack of exemptions, the ordinance "is so broadly drawn that it impermissibly curtails plaintiff juveniles' personal liberty interest in free movement to pursue non-delinquent activities."[168]

In *Ex parte McCarver*, the juvenile curfew ordinance had only two exemptions for a minor including: accompaniment by his parents, or in search of the services of a physician.[169] Although the Appeals Court of Texas acknowledged that there were these two exemptions, it pointed out several relevant exemptions that could have been included but were not. It argued that "so numerous do they occur to us as that they serve themselves to bring into question the reasonability of the law . . . .The rule laid down here is as rigid as under military law, and makes the tolling of the curfew bell equivalent to the drum taps of the camp."[170] In both *Anonymous v. City of Rochester* and *Betancourt v. Town of West New York*, the courts found that an exemption was missing, which was one of the reasons they overturned the juvenile curfew ordinance.[171] In the former case, the Appeals Court of New York explained that if the laws had contained an exemption allowing for parental consent to activities of minors during curfew hours, "it would [have been] a closer case [because] courts have upheld curfews having, among other things, such an exception as only minimally intrusive upon the parent's due process rights."[172] In the latter case, the Superior Court of New Jersey found that the exemptions were "not broad enough to recognize the right of parents to permit their children to participate in many legitimate activities."[173]

In contrast, in *City of Eastlake v. Ruggiero*, the Court of Appeals of Ohio found that ordinance was constitutionally valid when challenged by a parent

165. *Id.* at 1072.

166. *Id.* at 1074.

167. *McCollester v. City of Keene*, 586 F. Supp. at 1383.

168. *Id.* at 1385.

169. *Ex parte* McCarver, 46 S.W. 936, 936 (Tex. Crim. App. 1898).

170. *Id.* at 937.

171. Anonymous v. City of Rochester, 915 N.E.2d 593, 601 (N.Y. 2009); Betancourt v. Town of West New York, 769 A.2d 1065, 1068 (N.J. Super. Ct. App. Div. 2001).

172. *Anonymous*, 915 N.E.2d at 601.

173. *Betancourt*, 769 A.2d at 1068.

after he was found guilty of "allowing" his child to violate the juvenile curfew law.[174] The court held that although the law did restrict "minors from being upon public streets or sidewalks during designated nighttime periods, the ordinance is not an absolute prohibition . . . exceptions are made . . . thus there is no curtailment of normal or necessary juvenile nighttime activities."[175] In *In the Matter of Nancy C.*, the Court of Appeals of California addressed whether the curfew law as applied to a minor was unconstitutionally overbroad.[176] It held that the presence of the exemptions included helped guide the police officers in determining if the minors were on the streets for a lawful purpose.[177] Although the plaintiffs claimed that the juvenile curfew ordinance was overly broad in *State of Florida v. T.M., A.N., and D.N.*, the curfew ordinance in question had nine exemptions.[178] The Court of Appeals of Florida held that these exemptions would help the city achieve its goal of reducing juvenile crime and victimization because the exemptions "limit the scope of the curfew, thus ensuring that law enforcement focuses on those nocturnal activities which are most likely to lead to juvenile crime and victimization."[179]

Lastly, the U.S. District Court in *Bykofsky v. Borough of Middletown* upheld the juvenile curfew ordinance, finding that it did not unconstitutionally infringe upon minors' rights to travel, minors' rights under the First Amendment, parents' rights to control the upbringing of their children, or minors' rights under the Equal Protection Clause.[180] Another court credits this to the fact that the *Bykofsky* law was a "very narrowly drawn ordinance of many pages with eleven exceptions and was very carefully drafted."[181]

Recommendation 4: Avoid criminal sanctions in favor of civil ones.

The juvenile curfew laws have a variety of different penalties for minors and parents who violate them.[182] They may be faced with either criminal penalties or civil penalties. If it is a criminal disposition, minors may be: found guilty of a misdemeanor and sentenced to either community service or a

174. City of Eastlake v. Ruggiero, 220 N.E.2d 126, 126 (Ohio Ct. App. 1966).

175. *Id.* at 128. These exceptions included if the youth was with a parent or guardian, or had a legitimate excuse. *Id.*

176. *In the matter of* Nancy C., 28 Cal. App. 3d 747, 757 (Cal. Ct. App. 1972).

177. *Id.*

178. The plaintiffs also challenged the ordinance, claiming that it unconstitutionally infringed on certain fundamental rights, was vague and was inconsistent with state law. State v. T.M., A.N. & D.N., 761 So. 2d 1140, 1144 (Fla. Dist. Ct. App. 2000).

179. *Id.* at 1148.

180. Bykofsky v. Borough of Middletown, 401 F. Supp. 1242, 1261-66 (M.D. Pa. 1975).

181. *In re* Mosier, 394 N.E.2d 368, 376 (Ohio C.P. 1978).

182. Depending on the specific law this might only apply to parents and/or guardians. Other times it includes other adults.

fine,[183] adjudicated delinquent and transported to their homes or a holding facility,[184] supervised by the Department of Juvenile Justice for a period of not over six months,[185] or even sent to juvenile court for treatment, supervision, and rehabilitation.[186] Parents may be found guilty of a misdemeanor and sentenced to community service, a fine, parenting classes,[187] or subject to a jail sentence.[188] If it is a civil disposition, minors may be given a warning and both minors and parents may be fined.[189] Although twenty-two of the ordinances addressed in the forty-one cases contained specific penalty provisions,[190] the court only examined this issue in three of the cases (of which two of these cases were later consolidated into one).[191]

The issue of the proper penalty arose in *Commonwealth v. Weston*.[192] In this case, several minors challenged a juvenile curfew law which restricted youth under seventeen years of age from "remain[ing], either on foot or in a vehicle, in any public place or on the premises of any establishment within the City of Lowell during" the hours of 11:00 P.M. and 5:00 A.M.[193] The law provided criminal disposition and noncriminal disposition penalties. A person who was arrested or charged with a criminal complaint, if found guilty, could be fined up to $300.[194] In addition, a minor found guilty of violating a municipal ordinance may be adjudicated "a delinquent child" and even committed to the custody of the Department of Youth Services (DYS) until age

183. *See, e.g.*, Sale v. Goldman, 539 S.E.2d 446, 450 (W.Va. 2000).

184. *Id.*

185. *See, e.g.*, State of Florida v. J.P., 907 So.2d 1101, 1106 (Fla. 2004).

186. *See, e.g.*, Bykofsky v. Borough of Middletown, 401 F.Supp. 1242, 1248 (M.D. Pa. 1975).

187. *See, e.g.*, Hutchins v. D.C., 188 F.3d 531, 535 (D.C. Cir. 1999); Sale v. Goldman, 539 S.E.2d 446, 450 (W.Va. 2000).

188. *See, e.g.*, *Goldman*, 539 S.E.2d at 450.

189. *See, e.g.*, *J.P.*, 907 So.2d at 1119.

190. This is based on the court cases that included copies of the full law. Almost half of the reported cases (nineteen) did not include any penalties. However, it is possible that the laws did have penalty sections written into them but that courts chose to not cite to or include copies of those sections in their opinions. Separate research on the specific laws was not conducted. *See infra* Table 7.

191. *See J.P.*, 907 So. 2d at 1118–20; Commonwealth v. Weston, 913 N.E.2d 832, 844–46 (Mass. 2009).

192. *Weston*, 913 N.E.2d at 844.

193. *Id.* at 837. The minors challenged the law claiming it violated the Equal Protection Clause by denying minors the right to movement and travel. *Id.*

194. *Id.* at 838. Under "Criminal Disposition," it provided "Upon arrest and/or criminal complaint, a person who violates a provision of this Article II shall be, if so found by the Court, guilty of a separate offense for each day or part of a day during which the violation is committed, continued, or permitted. Each offense, upon conviction, is punishable by a fine not to exceed $300.00." *Id.*

eighteen.[195] A person could also be penalized by a noncriminal disposition, in which case a police officer would issue them a "Notice to Appear" in court where they could be fined fifty dollars for each violation.[196] The police officer would also forward the "Notice to Appear" in court to the parent or guardian of any minor "for informational purposes."[197]

In *Weston*, the Supreme Court of Massachusetts upheld the civil sanctions but overturned the criminal sanctions. Regarding the former, it concluded "that the ordinance's civil enforcement mechanism is reasonable, balanced, and narrowly tailored, especially in light of the government's need for flexibility when acting to protect children."[198] It discussed that the process that the officer must go through—i.e., stopping a minor suspected of violating the ordinance and asking for identification—was reasonable and acted as a deterrent to criminal activity itself.[199] Moreover, repeated citations for curfew violations may prompt the Department of Social Services to get involved by alerting them to a minor who is in need of services.[200] Lastly, the civil sanctions achieved its goals without creating a juvenile record and "insofar as . . . [it] does not provide for a minor's arrest, it reflects a proper balancing of the minor's liberty interest with the public interest, and ensures that such intrusions will not become a tool of harassment."[201]

However, it also concluded that "the criminal prosecution of a minor, with its potential for commitment to DYS, is an extraordinary and unnecessary response to what is essentially a status offense, and is contrary to the State's treatment of similar conduct."[202] The court pointed to the Child In Need of Services (CHINS) statute, which also deals with status offenses by minors and where the legislature had specifically rejected criminal sanctions. The CHINS statute provides "that it must 'be liberally construed so that . . . [children] shall

195. *Id.* at 845.

196. *Id.* at 838. The City of Lowell, "shall issue a 'Notice to Appear' in Court. The penalty for each violation shall be fifty dollars ($50) for each day or part of the day during which the violation is committed, continued, or permitted. A copy of the 'Notice to Appear' in Court which is given to a minor shall be forwarded to the parent(s) or Guardian(s) of said minor for informational purposes." *Id.*

197. *Weston*, 913 N.E.2d at 838. Under "Non-Criminal Disposition" it provided, "Any person who violates any provision of this Article II may be penalized by a noncriminal disposition . . . .This Article shall be enforced by a Police Officer of the City of Lowell who shall issue a 'Notice to Appear' in Court. The penalty for each violation shall be fifty dollars ($50) for each day or part of the day during which the violation is committed, continued, or permitted. A copy of the 'Notice to Appear' in Court which is given to a minor shall be forwarded to the parent(s) or Guardian(s) of said minor for informational purposes." *Id.*

198. *Id.* at 844.

199. *Id.*

200. *Id.*

201. *Id.* at 844-45.

202. *Weston*, 913 N.E.2d at 845.

be treated, not as criminals but as children in need of aid, encouragement and guidance.'"[203] The court found that the juvenile curfew law criminal disposition penalties went completely against this sentiment.[204] Lastly, the court held that the State had failed to show how the criminal penalties were necessary given the effect of the civil penalties.[205]

Curfew laws in both Pinellas Bay and Tampa also imposed criminal sanctions upon minors who violated them.[206] In Pinellas Bay, a juvenile could be criminally charged on his second violation of the ordinance.[207] If found guilty, he could be adjudicated as a "delinquent child," fined up to $500, and supervised or committed to the Department of Juvenile Justice for up to six months.[208] The Tampa law was the same except it permitted a fine of up to $1,000.[209]

In *State of Florida v. J.P. & T.M.*, the Supreme Court of Florida addressed the issue of criminal penalties for both cities' laws. The court found the criminal penalties to be "the most troubling aspect of its strict scrutiny review," especially when compared to the model juvenile curfew ordinance enacted by the Florida legislature, which only imposed a civil penalty of fifty dollars for the second and subsequent violations.[210] The court affirmed the opinion by the court of appeals, which "concluded that these criminal penalties indicate that the . . . ordinance does not use the least intrusive means to accomplish its purpose, especially when viewed against the model ordinance which accomplishes the same goal with only a civil penalty."[211] Lastly, the court pointed out that other juvenile curfew laws courts have upheld mostly imposed civil fines or community service requirements.[212]

Overall, it seems that courts are less likely to uphold juvenile curfew ordinances that contain criminal penalties rather than civil penalties. Once again, there is no guarantee and a court tomorrow could uphold an ordinance with criminal sanctions and overturn an ordinance with civil sanctions.[213] However, by including civil penalties this also helps address the implementation issues discussed previously.[214] For example, the police cannot use curfew laws as an excuse to arrest people. In addition, even if enforced

203. *Id.* at 845-46.
204. *Id.* at 846.
205. *Id.*
206. State of Florida v. J.P., 907 So. 2d 1101, 1118 (Fla. 2004).
207. *Id.* at 1106.
208. *Id.*
209. *Id.* at 1107.
210. *Id.* at 1118–19.
211. *J.P.*, 907 So. 2d at 1119.
212. *Id.*
213. *See, e.g.*, *id*. *See generally* Commonwealth v. Weston, 913 N.E.2d 832 (Mass. 2009).
214. *See supra* notes 26-30.

unfairly, it prevents targeted youth from obtaining criminal records that they otherwise might not have had.

C. Step 3: Policy Implementation

This next step, called Policy Implementation, includes the "execution or enforcement of a policy by the responsible institutions and organizations that are often, but not always, part of the public sector."[215] Laurence J. O'Toole broadly defined Policy Implementation as "what happens between the establishment of an apparent intention on the part of government to do something, or to stop doing something, and the ultimate impact in the world of action."[216] Policymakers should draft sections including proper enforcement and severability clauses in order to help ensure that juvenile curfews are implemented in a fair and just manner.

Recommendation 5: Avoid a discriminatory impact in implementation by considering the inclusion of enforcement mechanisms in the statute.

Even when policymakers have the best of intentions, curfew ordinances can still be implemented poorly, resulting in discrimination and unfair enforcement. To prevent this, curfew ordinances should be applied city-wide, rather than only in certain neighborhoods, and should contain clear enforcement provisions so that police officers know how to implement these laws fairly. This recommendation is based mostly on research from social scientists,[217] as few of the courts have addressed this issue yet.

Several of the juvenile curfew ordinances contained clear enforcement provisions. For example, in *Commonwealth v. Weston*, the police officer must first speak with the suspect before taking any enforcement action and must ask:

> the apparent offender's age and reason for being in the public place, or on the premises of an establishment. The officer shall not make an arrest or issue a notice to appear . . . unless the officer reasonably believes that an offense has occurred and that . . . no defense . . . is applicable.[218]

The court found that these enforcement provisions "ensure[d] the safety of the minor and the safety of the public."[219] In *Bykofsky v. Borough of Middletown*, a police officer who found a minor in violation of the curfew law had to take the minor to the Borough Police Station and immediately notify the minor's parents.[220] The law itself explains that:

215. HANDBOOK OF PUBLIC POLICY, *supra* note 89, at 51.

216. Laurence J. O'Toole Jr., *Research on Policy Implementation: Assessment and Prospects*, 10 J. PUB. ADMIN. RES. & THEORY 263, 266 (2000).

217. *Analysis of Curfew Enforcement*, *supra* note 16, at 19.

218. Commonwealth v. Weston, 913 N.E.2d 832, 838 (Mass. 2009).

219. *Id.* at 844.

220. Bykofsky v. Borough of Middletown, 401 F.Supp. 1242, 1271 (M.D. Pa. 1975).

> this is intended to permit ascertainment, under constitutional safeguards, of relevant facts, and to centralize responsibility in the sergeant there and then on duty for accurate, effective, fair, impartial, and uniform enforcement, and recording, thus making available experienced supervisory personnel, the best of facilities and access to information and records.[221]

Enforcement provisions were present in other juvenile curfew ordinances even though courts neglected to discuss them and their importance. For example, in *City of Panora v. Simmons*, the enforcement section authorized any on-duty city peace officer to arrest any minor who violates the curfew ordinance and "upon arrest, [to return] the minor . . . to the custody of the parent, guardian or other person charged with the care and custody of the minor."[222] In *Hutchins v. D.C.*, a police officer should start by "questioning an apparent offender to determine his age and reason for being in a public place."[223] Then, if the:

> police officer reasonably believes that an offense has occurred under the curfew law and that no defense exists, the minor will be detained by the police and then released into the custody of the minor's parent, guardian, or an adult acting in loco parentis [sic]. If no one claims responsibility for the minor, the minor may be taken either to his residence or placed into the custody of the Family Services Administration until 6:00 a.m. the following morning.[224]

In *Qutb v. Strauss*, "the ordinance requires police officers to ask the age of the apparent offender, and to inquire into the reasons for being in a public place during curfew hours before taking any enforcement action."[225] Only if the officer believes that the person has violated the juvenile curfew ordinance and that no defenses apply, may the officer then issue a citation or make an arrest.[226]

Although all of these may not be ideal enforcement provisions, at least some guidance is provided to the police officers implementing these ordinances. In contrast, the ordinance in *S.W. v. State of Florida* did not contain detailed enforcement provisions, but merely said that a child may be out on the street if the chief of police had granted him a written permit.[227] The court found "[t]he provision authorizing the police chief to make a special exception lacks sufficient guidelines within which to exercise his authority;" "[i]t bristles with the potential for selective enforcement."[228]

221. *Id.*
222. City of Panora v. Simmons, 445 N.W.2d 363, 364 (Iowa 1989).
223. Hutchins v. District of Columbia, 188 F.3d 531, 535 (D.C. Cir. 1999).
224. *Id.*
225. Qutb. v. Strauss, 11 F.3d 488, 490-91 (5th Cir. 1993).
226. *Id.* at 491.
227. S.W. v. State of Florida, 431 So.2d 339, 340 (Fla. Dist. Ct. App. 1983).
228. *Id.* at 341.

Recommendation 6: Include a severability clause.

A severability clause in a law is a section stating that if any other section of the law is found void for any reason then it can be separated from the law and removed without the court needing to overturn the entire law.[229] Of the juvenile curfew laws that were challenged in court, only three of them contained severability clauses.[230] Although courts found problems in the language of the juvenile curfew laws, the severability clauses allowed them to strike that language while still finding the laws constitutional.[231]

For example, in *Bykofsky v. Borough of Middletown*, the court explained "the ordinance states that a constitutional construction is intended and shall be given . . . [and] contains a very specific and detailed severability provision which states that severability is intended throughout and within the provisions of the ordinance."[232] Therefore, when the court found that the words "normal nighttime activities" and "consistent with the public interest" were unconstitutionally vague, it deleted them and found that the section "as so modified, pursuant to the severability provisions of the ordinance, [was] constitutional."[233]

D. Step 4: Evaluation and Termination

During this final step, "policy-making should be appraised against intended objectives and impacts."[234] Policymakers should evaluate the effectiveness of the policy in question and amend or even terminate it as necessary.[235] However, "evaluation studies are not restricted to a particular stage in the policy cycle; instead, the perspective is applied to the whole policy-making process and from different perspectives in terms of timing (ex ante, ex post)."[236] In other words, good policies provide for evaluations throughout the length of the policy so that an ineffective policy does not remain unaltered for long.[237]

229. *See* Commonwealth v. Weston, 913 N.E.2d 832, 838 (Mass. 2009) (where the severability clause provides "[i]f any provision, including, inter alia, any exception, part, phrase or term or the application to any person or circumstances is held to be invalid, other provisions or the application to other persons or circumstances shall not be affected thereby. It is intended that the ordinance would not be applied where its application would be unconstitutional.").

230. *See Weston*, 913 N.E.2d at 846; *see also Qutb.*, 11 F.3d at 496; *see also* Bykofsky v. Borough of Middletown, 401 F. Supp. 1242, 1248 (M.D. Pa. 1975).

231. *See Bykofsky*, 401 F. Supp. at 1248; *see also Weston*, 913 N.E.2d at 846.

232. *Bykofsky*, 401 F. Supp. at 1248.

233. *Id.* at 1251.

234. HANDBOOK OF PUBLIC POLICY, *supra* note 89, at 53.

235. *Id.*

236. *Id.*

237. *Id.*

Recommendation 7: Include a section ensuring that the law is evaluated regularly and updated accordingly.

Although courts do not spend much time discussing whether the ordinances need to include regular evaluations and amendments, many public policy researchers have remarked upon the importance of policy evaluation in general.[238] Moreover, the three ordinances that included such provisions were all upheld by courts.[239] On one hand, this may be a coincidence. However, by having procedures to deal with vague or unclear language, it is also possible that people may avoid challenging these ordinances in court, as there are alternative procedures in place.

In *Bykofsky v. Borough of Middleton*, the juvenile curfew ordinance had two in-depth sections discussing continuing evaluation and amendments of the law. Under the first section, it authorized the Mayor "to give advisory opinions, in writing or immediately reduced to writing, which shall be binding, and shall be adhered to by the police, until the ordinance is amended in such respect, interpreting terms, phrases, parts or any provisions."[240] The advisory opinions should be in response to questions dealing with language or conduct deemed "(a) ambiguous, (b) as having a potential chilling effect on constitutional rights specifically invoked, or (c) as otherwise invalid."[241] Moreover, "this administrative remedy must be exhausted prior to presenting to any court a question in any of [the] three categories."[242] The court found that these mayoral advisory opinions provided "a means for the citizenry to determine officially in any given factual situation what is prohibited."[243] The second section authorizes the city council to continue its evaluation and updating of the curfew ordinance. To this end, the city council shall gather all exceptional cases, notices of school and other activities, and all mayoral advisory opinions and use them "in further updating and continuing evaluation of the Curfew Ordinance."[244]

Although not discussed in the court opinions, ordinances in both *Schliefer v. City of Charlottesville* and *Qutb v. Strauss* included evaluation provisions.[245] In the former case, within one year after the ordinance took effect "the City

238. *See generally* JONATHAN VERSCHUUREN, THE IMPACT OF LEGISLATION: A CRITICAL ANALYSIS OF EX ANTE EVALUATION (2009).

239. *See* Qutb. v. Strauss, 11 F.3d 488, 496 (5th Cir. 1993); Bykofsky v. Borough of Middletown, 401 F. Supp. 1242, 1266, 1272 (M.D. Pa. 1975); Schleifer by Schleifer v. City of Charlottesville, 159 F.3d 843, 855 (4th Cir. 1998).

240. *Bykofsky*, 401 F. Supp. at 1272.

241. *Id.*

242. *Id.*

243. *Id.* at 1252.

244. *Id.* at 1272.

245. *See* Schleifer by Schleifer v. City of Charlottesville, 159 F.3d 843, 858 (4th Cir. 1998); Qutb. v. Strauss, 11 F.3d 488, 498 (5th Cir. 1993).

Manager shall review [it] and report and make recommendations to the City Council concerning the effectiveness of and continuing need for the ordinance."[246] The report shall specifically include:

> (a) the practicality of enforcing the ordinance and any problems with enforcement identified by the Police Department; (b) the impact and cost of the ordinance; (c) other data and information which the Police Department believes to be relevant in assessing the effectiveness of the curfew ordinance; and (d) information from citizens regarding whether the ordinance has been administered and enforced fairly, including information regarding the age, gender and race of those charged or detained under the ordinance.[247]

In the latter case, the city manager shall review the ordinance and make recommendations in a report to the city council within six months after initial enforcement.[248] The report shall include: "[a] the practicality of enforcing the ordinance and any problems with enforcement identified by the police department; [b] the impact of the ordinance on crime statistics; [c] the number of persons successfully prosecuted for a violation of the ordinance; and [d] the city's net cost of enforcing the ordinance."[249]

VI. CONCLUSION

As demonstrated by the varying opinions on the issues from both the stakeholders in Montgomery County, Maryland and this country's courts, the enactment of a juvenile curfew law is a complicated endeavor. However, the evidence from social scientists seems to suggest that it is a worthwhile one.[250] Therefore, the juvenile curfew ordinances need to be written in such a manner as to prevent courts from overturning them on the grounds of vagueness, overbreadth, equal protection or infringement of fundamental rights of either the juveniles or the parents. This article hopefully provides recommendations for policymakers which do just that, and include: (a) conduct a study of juvenile crime and victimization prior to enacting the ordinance and include it in a purpose section of the ordinance, (b) avoid the use of terms that are not defined, (c) avoid drafting statutes that are considered overly broad because they fail to include carefully crafted exemptions, (d) avoid criminal sanctions in favor of civil ones, (e) avoid a discriminatory impact in implementation by considering the inclusion of enforcement mechanisms in a statute, (f) include a severability clause, and (g) include a section ensuring that the law is evaluated regularly and updated accordingly.

246. *Schleifer by Schleifer*, 159 F.3d at 858.

247. *Id.*

248. *Qutb.*, 11 F.3d at 498.

249. *Id.*

250. *See* Levy, *supra* note 21; *Vehicle Fatalities*, *supra* note 21; *Vehicle Injury*, *supra* note 21; Weiss et al., *supra* note 22; Shatz et al., *supra* note 23.

Obviously though, the issues behind juvenile curfew laws are part of a global problem and are much more complicated than the simple worry that a child is just "out too late." It has to do with how parents are raising their children and what issues exist in the children's home life. For example, is there parental supervision and monitoring? Do the parent(s) work late while the children are left alone? Does the child have other disciplinary problems? All of these issues, among a wide range of others, factor into a juvenile's likelihood of being a perpetrator or victim of a crime.[251] And by being out on the streets and in other public places late at night, juveniles' risks of being involved in traumas, traffic injuries, and traffic fatalities are also increased.[252] Any of these problems may lead a community to consider enacting a juvenile curfew ordinance.

Given the complicated nature behind juvenile curfew laws, it is important that these laws are part of a broader enforcement strategy. It is not enough to simply enact these laws. Policymakers and police departments must work with parents so they understand why these laws are enacted and what they, as parents, can do to help. The goal is not to simply arrest children, give them criminal records, and then release them to break the law again, but rather, to work as a community to reduce the underlying problems mentioned above. One way to accomplish this goal is for the police to work with other state departments to create curfew centers for the children to be brought to instead of bringing them to the police station. For example, in Baltimore, Maryland, the police and the Department of Juvenile Services have teamed up and created curfew centers that offer counseling and support services to these juveniles and their families.[253]

251. *See, e.g.*, Rolf Loeber & David P. Farrington, *Young Children Who Commit Crime: Epidemiology, Developmental Origins, Risk Factors, Early Interventions, and Policy Implications*, 12 DEV. & PSYCHOPATHOLOGY 737, 737-762 (summarizing risk and protective factors in the individual, family, peer group, school and neighborhood which leads to early youth delinquency).

252. Levy, *supra* note 21; *Vehicle Fatalities*, *supra* note 21; *Vehicle Injury*, *supra* note 21; Weiss et al., *supra* note 22; Shatz et al., *supra* note 23.

253. OFFICE OF MAYOR STEPHANIE RAWLINGS-BLAKE, MAYOR RAWLINGS-BLAKE ANNOUNCES OPENING OF SUMMER CURFEW CENTER (June 14, 2011), *available at* http://archive.baltimorecity.gov/OfficeoftheMayor/NewsMedia/tabid/66/ID/2979/Mayor_Rawlings-Blake_Announces_Opening_of_Summer_Curfew_Center.aspx; G. Gately, *Baltimore's Newly Approved Youth Curfew Among Strictest in Nation*, JUVENILE JUSTICE INFORMATION EXCHANGE (June 16, 2014), http://jjie.org/baltimores-newly-approved-youth-curfew-among-strictest-in-nation/. As of June 2, 2014, the Baltimore City Council passed a much stronger curfew law. However, it still plans to have Curfew Centers which will "be staffed by employees and volunteers who will strive to identify youth and family needs that could be addressed by state, city or community health, mental health and social services providers." *Id.*

In *Bykofsky v. Borough of Middletown*, the law itself provides for this type of community engagement and teamwork. It instructs the mayor and relevant committees of the Borough Council to:

> work with existing . . . [or organize new] voluntary groups, and stimulate volunteer leadership, in programs of research and of action dealing constructively on neighborhood and local bases, with juvenile delinquency, and the prevention, control or containment therefore, in all its ramifications and with practicable steps toward the good life, and a better life, for minors 17 or less years of age.[254]

All in all, although juvenile curfew ordinances are complicated, they seem to be effective. Therefore, policymakers need to draft these laws in such a way as to avoid problems in other similar statutes that resulted in them being overturned.

254. Bykofsky v. Borough of Middletown, 401 F. Supp. 1242, 1272-73 (M.D. Pa. 1975).

TABLE 1

Juvenile Curfew Ordinances Found Unconstitutional – By Case				
	LEVEL OF SCRUTINY			
CASE NAME	SS	RB	Inter.	N/A
Ex parte McCarver, 46 S.W. 936 (Tex. Crim. App. 1898)				X
Alves v. Justice Court of Chico Judicial Dist., Butte County, 306 P.2d 601 (Cal. Ct. App. 1957)				X
Hayes v. Municipal Court of Oklahoma City, 487 P.2d 74 (Okla. Crim. App. 1971)				X
In re Doe, 513 P.2d 1385 (Haw. 1973)				X
City of Seattle v. Pullman, 514 P.2d 1059 (Wash. 1973)				X
Naprstek v. City of Norwich, 545 F.2d 815 (2d Cir. 1976)	X			
In re Mosier, 394 N.E.2d 368 (Ohio C.P. 1978)	X			
W.J.W. v. State of Florida 356 So.2d 48 (Fla. Ct. App. 1978)				X
McCollester v. City of Keene, 586 F.Supp 1381 (D.N.H. 1984)	X			
Johnson v. City of Opelousas, 658 F.2d 1065 (5th Cir. 1981)			X	
T.F. v. State of Florida, 431 So.2d 342 (Fla. Ct. App. 1983)				X
S.W. v. State of Florida, 431 So.2d 339 (Fla. Dist. Ct. App. 1983)				X
City of Wadsworth v. Owens, 536 N.E.2d 67 (Wadsworth Municipal Court, Ohio 1987)	X			
In re Frank O., 201 Cal.App.3d 1041 (Cal. Ct. App. 1988)				X
K.L.J. v. State of Florida, 581 So.2d 920 (Fla. Dist. Ct. App. 1991)	X			
Brown v. Ashton, 611 A.2d 599 (Md. 1992)	X			
Nunez by Nunez v. City of San Diego, 114 F.3d 935 (9th Cir. 1997)	X			
Betancourt v. Town of West New York, 769 A.2d 1065 (N.J. Super. Ct. App. Div. 2001)				X
Ramos v. Vernon, 353 F.3d 171 (2d Cir. 2003)			X	
*State of Florida v. J.P., 907 So.2d 1101 (Fla. 2004)	XX			

City of Sumner v. Walsh, 61 P.3d 1111 (Wash. 2004)	X			
Hodgkins v. Peterson (not reported in F.Supp.2d) No. 1:04-CV-569-JDT-TAB, 2004 WL 1854194 (S.D. Ind. July 23, 2004)			X	
Anonymous v. City of Rochester, 915 N.E.2d 593 (N.Y.2009)			X	
City of Maquoketa v. Russell & Campbell, 484 N.W.2d 179 (Iowa 2009)	X			
**Two cases consolidated into one and counted as two cases*				

TABLE 2

Juvenile Curfew Ordinances Found Constitutional – By Case				
	LEVEL OF SCRUTINY			
CASE NAME	SS	RB	Inter.	N/A
People v. Walton, 161 P.2d 498, 503 (Cal.App.2d Supp. 1945)		X		
City of Eastlake v. Ruggiero, 220 N.E.2d 126 (Ohio Ct. App. 1966)				X
In the matter of Nancy C., 28 Cal. App. 3d 747 (Cal. Ct. App. 1972)		X		
People v. Chambers, 335 N.E.2d 612 (Ill. App. Ct. 1975)				X
Bykofsky v. Borough of Middletown, 401 F.Supp. 1242 (M.D. Pa. 1975)		X		
People in Interest of J.M., 768 P.2d 219 (Col. 1989)	X			
City of Panora v. Simmons, 445 N.W. 2d 363 (Iowa 1989)		X		
Village of Deerfield v. Greenberg, 550 N.E.2d 12 (Ill. App. Ct. 1990)				X
Qutb v. Strauss, 11 F.3d 488 (5th Cir. 1993)	X			
In the Matter of Appeal in Maricopa Country, 887 P.2d 599 (Ariz. Ct. App. 1994)			X	
Schliefer by Schleifer v. City of Charlottesville, 159 F.3d 843 (4th Circ. 1998)			X	
Hutchins v. District of Columbia, 188 F.3d 531 (D.C. Cir. 1999)			X	
State v. T.M., A.N. & D.N., 761 So.2d 1140 (Fla. Dist. Ct. App. 2000)			X	
Sale v. Goldman, 539 S.E.2d 446 (W.Va. 2000)			X	
**Commonwealth v. Weston, 913 N.E.2d 832 (Mass. 2009)	X			
State of Idaho v. John Doe, 231 P.3d 1016 (Id. 2010)	X			
***Criminal penalty provision found unconstitutional*				

TABLE 3

Juvenile Curfew Ordinances Found Unconstitutional – By State	
STATE	CASE NAME
***California	Alves v. Justice Court of Chico Judicial Dist., Butte County, 306 P.2d 601 (Cal. Ct. App. 1957)
	In re Frank O., 201 Cal.App.3d 1041 (Cal. Ct. App. 1988)
***Florida	W.J.W. v. State of Florida 356 So.2d 48 (Fla. Ct. App. 1978)
	T.F. v. State of Florida, 431 So.2d 342 (Fla. Ct. App. 1983)
	S.W. v. State of Florida, 431 So.2d 339 (Fla. Dist. Ct. App. 1983)
	K.L.J. v. State of Florida, 581 So.2d 920 (Fla. Dist. Ct. App. 1991)
	*State of Florida v. J.P., 907 So.2d 1101 (Fla. 2004)
Hawaii	*In re* Doe, 513 P.2d 1385 (Haw. 1973)
Indiana	Hodgkins v. Peterson (not reported in F.Supp.2d) No. 1:04-CV-569-JDT-TAB, 2004 WL 1854194 (S.D. Ind. July 23, 2004)
***Iowa	City of Maquoketa v. Russell & Campbell, 484 N.W.2d 179 (Iowa 2009)
Maryland	Brown v. Ashton, 611 A.2d 599 (Md. 1992)
New Hampshire	McCollester v. City of Keene, 586 F.Supp 1381 (D.N.H. 1984)
New Jersey	Betancourt v. Town of West New York, 769 A.2d 1065 (N.J. Super. Ct. App. Div. 2001)
New York	Anonymous v. City of Rochester, 915 N.E.2d 593 (N.Y.2009)
***Ohio	*In re* Mosier, 394 N.E.2d 368 (Ohio C.P. 1978)
	City of Wadsworth v. Owens, 536 N.E.2d 67 (Wadsworth Municipal Court, Ohio 1987)
Oklahoma	Hayes v. Municipal Court of Oklahoma City, 487 P.2d 74 (Okla. Crim. App. 1971)
Texas	*Ex parte* McCarver, 46 S.W. 936 (Tex. Crim. App. 1898)
Washington	City of Seattle v. Pullman, 514 P.2d 1059 (Wash. 1973)
	City of Sumner v. Walsh, 61 P.3d 1111 (Wash. 2004)
**Two cases consolidated into one and counted as two cases*	
****State has found juvenile curfew ordinances both unconstitutional and constitutional*	

TABLE 4

Juvenile Curfew Ordinances Found Constitutional – By State	
STATE	CASE NAME
Arizona	In the Matter of Appeal in Maricopa Country, 887 P.2d 599 (Ariz. Ct. App. 1994)
***California	People v. Walton, 161 P.2d 498, 503 (Cal.App.2d Supp. 1945)
	In the matter of Nancy C., 28 Cal. App. 3d 747 (Cal. Ct. App. 1972)
Colorado	People in Interest of J.M., 768 P.2d 219 (Col. 1989)
***Florida	State v. T.M., A.N. & D.N., 761 So.2d 1140 (Fla. Dist. Ct. App. 2000)
Idaho	State of Idaho v. John Doe, 231 P.3d 1016 (Id. 2010)
Illinois	People v. Chambers, 335 N.E.2d 612 (Ill. App. Ct. 1975)
	Village of Deerfield v. Greenberg, 550 N.E.2d 12 (Ill. App. Ct. 1990)
***Iowa	City of Panora v. Simmons, 445 N.W. 2d 363 (Iowa 1989)
Massachusetts	**Commonwealth v. Weston, 913 N.E.2d 832 (Mass. 2009)
Ohio	City of Eastlake v. Ruggiero, 220 N.E.2d 126 (Ohio Ct. App. 1966)
West Virginia	Sale v. Goldman, 539 S.E.2d 446 (W.Va. 2000)
***Criminal penalty provision found unconstitutional*	
****State has found juvenile curfew ordinances both unconstitutional and constitutional*	

TABLE 5

Juvenile Curfew Ordinances Found Unconstitutional – By Federal Court	
FEDERAL COURT	CASE NAME
U.S. Court of Appeals, Second Circuit	Naprstek v. City of Norwich, 545 F.2d 815 (2d Cir. 1976)
U.S. Court of Appeals, Second Circuit	Ramos v. Vernon, 353 F.3d 171 (2d Cir. 2003)
U.S. Court of Appeals, Fifth Circuit	Johnson v. City of Opelousas, 658 F.2d 1065 (5th Cir. 1981)
U.S. Court of Appeals, Ninth Circuit	Nunez by Nunez v. City of San Diego, 114 F.3d 935 (9th Cir. 1997)

TABLE 6

Juvenile Curfew Ordinances Found Constitutional – By Federal Court	
FEDERAL COURT	CASE NAME
U.S. Court of Appeals, Fourth Circuit	Schliefer by Schleifer v. City of Charlottesville, 159 F.3d 843 (4th Cir. 1998)
U.S. Court of Appeals, Fifth Circuit	Qutb v. Strauss, 11 F.3d 488 (5th Cir. 1993)
U.S. District Court, M.D. Pennsylvania	Bykofsky v. Borough of Middletown, 401 F.Supp. 1242 (M.D. Pa. 1975)
U.S. Court of Appeals, District of Columbia	Hutchins v. District of Columbia, 188 F.3d 531 (D.C. Cir. 1999)

TABLE 7

Provisions Contained in All of the Juvenile Curfew Ordinances				
	Exemption			Penalty
Case Name	**** Parent or Guardian	**** Other Adult	Engaged in or Traveling to/from Employment	
Ex parte McCarver, 46 S.W. 936 (Tex. Crim. App. 1898)	X			
Alves v. Justice Court of Chico Judicial Dist., Butte County, 306 P.2d 601 (Cal. Ct. App. 1957)	X		X	
Hayes v. Municipal Court of Oklahoma City, 487 P.2d 74 (Okla. Crim. App. 1971)				
In re Doe, 513 P.2d 1385 (Haw. 1973)	X			
City of Seattle v. Pullman, 514 P.2d 1059 (Wash. 1973)	X		X	
Naprstek v. City of Norwich, 545 F.2d 815 (2d Circ. 1976)	X	X		X
In re Mosier, 394 N.E.2d 368 (Ohio C.P. 1978)	X	X	X	X
W.J.W. v. State of Florida 356 So.2d 48 (Fla. Ct. App. 1978)	X		X	
Johnson v. City of Opelousas, 658 F.2d 1065 (5th Circ. 1981)	X	X		X
T.F. v. State of Florida, 431 So.2d 342 (Fla. Ct. App. 1983)	X	X		
S.W. v. State of Florida, 431 So.2d 339 (Fla. Dist. Ct. App. 1983)	X	X	X	
McCollester v. City of Keene, 586 F.Supp 1381 (D.N.H. 1984)	X	X	X	

City of Wadsworth v. Owens, 536 N.E.2d 67 (Wadsworth Municipal Court, Ohio 1987)	X	X		X
In re Frank O., 201 Cal.App.3d 1041 (Cal. Ct. App. 1988)	X	X		
K.L.J. v. State of Florida, 581 So.2d 920 (Fla. Dist. Ct. App. 1991)	X	X	X	
Brown v. Ashton, 611 A.2d 599 (Md. 1992)	X		X	X
Nunez by Nunez v. City of San Diego, 114 F.3d 935 (9th Circ. 1997)	X	X	X	X
Betancourt v. Town of West New York, 769 A.2d 1065 (N.J. Super. Ct. App. Div. 2001)	X		X	X
Ramos v. Vernon, 353 F.3d 171 (2d Cir. 2003)	X	X	X	X
*State of Florida v. J.P., 907 So.2d 1101 (Fla. 2004)	XX	XX	XX	XX
City of Sumner v. Walsh, 61 P.3d 1111 (Wash. 2004)	X	X	X	X
Hodgkins v. Peterson (not reported in F.Supp.2d) No. 1:04-CV-569-JDT-TAB, 2004 WL 1854194 (S.D. Ind. July 23, 2004)	X	X		X
Commonwealth v. Weston, 913 N.E.2d 832 (Mass. 2009)	X		X	X
Anonymous v. City of Rochester, 915 N.E.2d 593 (N.Y.2009)	X	X	X	
City of Maquoketa v. Russell & Campbell, 484 N.W.2d 179 (Iowa 2009)	X	X	X	
People v. Walton, 161 P.2d 498, 503 (Cal.App.2d Supp. 1945)	X	X		

City of Eastlake v. Ruggiero, 220 N.E.2d 126 (Ohio Ct. App. 1966)	X	X		
In the matter of Nancy C., 28 Cal. App. 3d 747 (Cal. Ct. App. 1972)	X	X		
People v. Chambers, 335 N.E.2d 612 (Ill. App. Ct. 1975)	X	X	X	X
Bykofsky v. Borough of Middletown, 401 F.Supp. 1242 (M.D. Pa. 1975)	X	X	X	X
People in Interest of J.M., 768 P.2d 219 (Col. 1989)	X	X		
City of Panora v. Simmons, 445 N.W. 2d 363 (Iowa 1989)	X	X	X	X
Village of Deerfield v. Greenberg, 550 N.E.2d 12 (Ill. App. Ct. 1990)	X	X	X	X
Qutb v. Strauss, 11 F.3d 488 (5th Cir. 1993)	X	X	X	X
In the Matter of Appeal in Maricopa Country, 887 P.2d 599 (Ariz. Ct. App. 1994)	X	X		
Schliefer by Schleifer v. City of Charlottesville, 159 F.3d 843 (4th Cir. 1998)	X	X	X	X
Hutchins v. District of Columbia, 188 F.3d 531 (D.C. Cir. 1999)	X	X	X	X
State v. T.M., A.N. & D.N., 761 So.2d 1140 (Fla. Dist. Ct. App. 2000)	X	X	X	
Sale v. Goldman, 539 S.E.2d 446 (W.Va. 2000)	X		X	X
State of Idaho v. John Doe, 231 P.3d 1016 (Id. 2010)	X			X
**Two cases consolidated into one and counted as two cases*				
*****Accompaniment with children by parent or guardian, or other adult*				

TABLE 8

Exemptions in Curfew Ordinance Found Unconstitutional			
	Exemptions		
Case Name	Exercising Fundamental Right	Emergency Errand	On the Sidewalk
Ex parte McCarver, 46 S.W. 936 (Tex. Crim. App. 1898)		X	
Alves v. Justice Court of Chico Judicial Dist., Butte County, 306 P.2d 601 (Cal. Ct. App. 1957)			
Hayes v. Municipal Court of Oklahoma City, 487 P.2d 74 (Okla. Crim. App. 1971)			
In re Doe, 513 P.2d 1385 (Haw. 1973)			
City of Seattle v. Pullman, 514 P.2d 1059 (Wash. 1973)			
Naprstek v. City of Norwich, 545 F.2d 815 (2d Cir. 1976)			
In re Mosier, 394 N.E.2d 368 (Ohio C.P. 1978)			
W.J.W. v. State of Florida 356 So.2d 48 (Fla. Ct. App. 1978)			
McCollester v. City of Keene, 586 F.Supp 1381 (D.N.H. 1984)	X		
Johnson v. City of Opelousas, 658 F.2d 1065 (5th Cir. 1981)		X	
T.F. v. State of Florida, 431 So.2d 342 (Fla. Ct. App. 1983)			
S.W. v. State of Florida, 431 So.2d 339 (Fla. Dist. Ct. App. 1983)			
City of Wadsworth v. Owens, 536 N.E.2d 67 (Wadsworth Municipal Court, Ohio 1987)			
In re Frank O., 201 Cal.App.3d 1041 (Cal. Ct. App. 1988)			

K.L.J. v. State of Florida, 581 So.2d 920 (Fla. Dist. Ct. App. 1991)			
Brown v. Ashton, 611 A.2d 599 (Md. 1992)			
Nunez by Nunez v. City of San Diego, 114 F.3d 935 (9th Circ. 1997)		X	
Betancourt v. Town of West New York, 769 A.2d 1065 (N.J. Super. Ct. App. Div. 2001)		X	
Ramos v. Vernon, 353 F.3d 171 (2d Cir. 2003)		X	
*State of Florida v. J.P., 907 So.2d 1101 (Fla. 2004)	XX	XX	XX
City of Sumner v. Walsh, 61 P.3d 1111 (Wash. 2004)		X	X
Hodgkins v. Peterson (not reported in F.Supp.2d) No. 1:04-CV-569-JDT-TAB, 2004 WL 1854194 (S.D. Ind. July 23, 2004)	X	X	
Commonwealth v. Weston, 913 N.E.2d 832 (Mass. 2009)	X	X	X
Anonymous v. City of Rochester, 915 N.E.2d 593 (N.Y.2009)	X	X	
City of Maquoketa v. Russell & Campbell, 484 N.W.2d 179 (Iowa 2009)			
**Two cases consolidated into one and counted as two cases*			

TABLE 9

Exemptions in Curfew Ordinance Found Constitutional			
	Exemptions		
Case Name	Exercising Fundamental Right	Emergency Errand	On the Sidewalk
People v. Walton, 161 P.2d 498, 503 (Cal.App.2d Supp. 1945)			
City of Eastlake v. Ruggiero, 220 N.E.2d 126 (Ohio Ct. App. 1966)			
In the matter of Nancy C., 28 Cal. App. 3d 747 (Cal. Ct. App. 1972)		X	
People v. Chambers, 335 N.E.2d 612 (Ill. App. Ct. 1975)			
Bykofsky v. Borough of Middletown, 401 F.Supp. 1242 (M.D. Pa. 1975)	X	X	X
People in Interest of J.M., 768 P.2d 219 (Col. 1989)			
City of Panora v. Simmons, 445 N.W. 2d 363 (Iowa 1989)	X		
Village of Deerfield v. Greenberg, 550 N.E.2d 12 (Ill. App. Ct. 1990)			
Qutb v. Strauss, 11 F.3d 488 (5th Cir. 1993)	X	X	X
In the Matter of Appeal in Maricopa Country, 887 P.2d 599 (Ariz. Ct. App. 1994)		X	
Schliefer by Schleifer v. City of Charlottesville, 159 F.3d 843 (4th Cir. 1998)	X	X	X
Hutchins v. District of Columbia, 188 F.3d 531 (D.C. Cir. 1999)	X	X	X
State v. T.M., A.N. & D.N., 761 So.2d 1140 (Fla. Dist. Ct. App. 2000)	X	X	X

Sale v. Goldman, 539 S.E.2d 446 (W.Va. 2000)	X	X	
State of Idaho v. John Doe, 231 P.3d 1016 (Id. 2010)		X	